



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of all or part of the security deposit, and to recover the filing fee.

The hearing commenced on September 7, 2017, and after 70 minutes, the hearing was adjourned to allow for additional time to hear evidence from the parties. An Interim Decision was issued dated September 8, 2017, which should be read in conjunction with this decision.

On December 12, 2017, the hearing continued and after an additional 65 minutes, the hearing concluded.

In attendance at both dates of the hearing were both landlords, both tenants and a tenant advocate (“advocate”). The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The parties did not raise any concerns regarding the service of documentary or digital evidence.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

A month to month tenancy began on August 1, 2012 and ended on February 28, 2017 by mutual agreement of the parties. Monthly rent in the amount of \$1,400.00 was due on the first day of each month during the tenancy. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 at the start of the tenancy which the landlords continue to hold.

The landlords have applied for a monetary order in the amount of \$15,378.81 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpet and pad replacement	\$5,471.12
2. Painting of drywall damage	\$1,500.00
3. Supplies for drywall repair	\$33.32
4. Vacancy permit for sitting empty due to damages (comprised of \$216.00 x 6 months)	\$1,296.00
5. Replace interior door	\$55.99
6. 2 USB drives	\$22.38
7. Damage (Security) deposit	\$700.00
8. Pet Damage deposit	\$700.00
9. One month of unpaid rent	\$1,400.00
10. Loss of income (comprised of \$700.00 x 6 months)	\$4,200.00
TOTAL	\$15,378.81

The landlords were advised during the hearing that they were not entitled to claim the cost of the security deposit of \$700.00 and pet damage deposit of \$700.00 as they already hold both deposits by the tenants. Therefore, I find the landlords claim is \$1,400.00 less and actually totals **\$13,978.81** versus \$15,378.81. The tenants also

confirmed their understanding that I would only be considering a maximum claim of \$13,978.81 and not the original amount of \$15,378.81 as described above.

Settlement Agreement

During the hearing, the parties agreed on a mutually settled agreement regarding some of the items being claimed by the landlords. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement by item number	Agreed upon compensation to landlords by tenants
3. Supplies for drywall repair	\$33.32
9 One month of unpaid rent (February 2017)	\$1,400.00
TOTAL	\$1,433.32

Evidence for remainder of items

The landlords testified that the tenants provided their written forwarding address which was received by mail on March 28, 2017 and that the letter was dated March 15, 2017. The landlords applied for dispute resolution claiming against the tenants' security deposit on April 11, 2017.

Regarding item 1, the landlords have claimed \$5,471.12 for the cost to replace carpets that the landlords claim the tenants damaged during the tenancy. The landlord referred a quote dated April 3, 2017. The landlords explained that while the total estimate was for \$11,476.56 they are only claiming for the carpets damaged by the tenants and have used the amounts highlighted on the quote as follows:

A. Carpet	\$2,423.46
B. Carpet pad	\$699.66
C. Installation in basement and stairs	\$1,599.00
D. Tear out and dispose of carpet in basement	\$499.00

E. Portion of GST related A,B,C and D above	\$273.25
TOTAL	\$5,494.37

The landlords confirmed that they claimed for slightly less than the \$5,494.37 amount by claiming \$5,471.12. The landlords testified that the carpets were 5 years old at the start of the tenancy which based on the end of tenancy date, makes the original carpets 9.5 years old by the end of the tenancy. The tenants stated during the hearing that the tenancy was four years and 8 months long and not 4.5 years as claimed by the landlords.

The landlords referred to colour photos submitted in evidence. The landlords stated that one of the photos show the inside of a bedroom closet in the basement and compared that photo to another photo taken at the end of the tenancy. The landlords also referred to another photo of the carpet taken at the end of the tenancy and referred to the incoming condition inspection report which did not indicate any problems with the carpets. The landlords testified that they made three scheduled attempts for an outgoing condition inspection with the tenants and that eventually they received a phone call from the female tenant stating to do the final walkthrough without them which the tenants agreed occurred during the hearing. As a result, the landlords did complete the outgoing walkthrough without the tenants present and in the outgoing condition inspection report, the landlords indicate that in the basement the carpets are heavily soiled and ruined, have animal urination, a burn mark, and heavy staining.

The landlords presented several colour photos showing stains, marks, and soiled areas on the carpets including one that appeared to be pink nail polish. The tenants responded by stating that the pink stain was a washable felt pen but did not explain why they did not wash it out if it was washable and not pink nail polish as claimed by the landlords. The tenants confirmed they did not clean the carpets before vacating and claim that they did not get the chance to do professional cleaning before they vacated.

The tenants and landlords both referred to a photo of staining on the stairs and both parties had a different version of what caused the staining. The tenants stated that the staining was from a water leak and the landlords stated that while there was a water leak that was responded to immediately and repaired, that the staining was not caused from that water leak and was staining caused by the tenants.

Regarding item 2, the landlords have claimed \$1,500.00 for painting of the drywall damage. The landlords stated that the interior paint was five years old and was last painted in 2012. The landlords stated that while they paid \$2,250.00 for painting which was supported by the estimate submitted in evidence they have only charged the tenants \$1,500.00 as they deducted \$750.00 as they did not paint the storage room so they deducted the equivalent of that area from the total amount paid. The landlords referred to many colour photos. In one photo, there is a burn mark on the ceiling which the tenants stated was from their daughter who had a candle too close to the ceiling. Another photo shows many gouges in a post which the tenants claim were there and had been painted over at the start of the tenancy and became more visible when the landlords sanded the wall and filled the gouges and then took photos. The landlords denied that occurred and stated that all damages claimed were from the tenants and that the incoming condition inspection supports the landlords' version of events.

Regarding a large hole in a wall, the landlords stated that the tenants made an attempt to repair the whole but did a poor job that needed to be repaired. In another photo, the landlords described the unreasonable number of nail holes in a room that were repaired. The landlords also stated that while they are not claiming for all damages to the rental unit they focused on the major damages and let some of the minor things go as "wear and tear".

The tenants stated that all photos were taken before attempts to clean by the tenants or the landlords. The landlords stated that the photo were taken at the end of the tenancy and that all attempts to clean by the tenants should have been done before they vacated and that they are responsible as a result. The tenants stated that they feel the whole basement did not need repainting and new carpets. The landlords stated that carpets were ruined by the tenants and that the tenants damaged the walls that went well beyond reasonable wear and tear and that the landlords are not claiming for anything that could have been reasonable wear and tear in their claim.

Regarding item 4, the landlords have claimed \$1,296.00 comprised of \$216.00 for a period of six months as the landlords stated that they needed a special insurance policy that would cover their vacant rental unit. The landlords have claimed for six months yet in the hearing testified that the last day of repairs was May 24th, 2017 which is three months later. The tenants stated that claiming for six months is excessive and that renovations do not take six months. The landlords stated that their original intent was to have a landlord's mother move in when the tenants vacated at half the normal rent charged and that due to the repairs needed, the mother changed her mind and the landlords decided to sell the rental unit instead. The landlords submitted a document

showing \$216.00 effective March 30, 2017 however the rental unit address is not listed on that document.

Regarding item 5, the landlords have claimed \$55.99 to replace a damaged interior door. The landlords submitted a copy of the receipt and referred to several colour photos showing repaired holes in the interior door. The tenants claim that all but one hole had been there during the tenancy and that the tenants only caused one hole in that interior door. The outgoing condition inspection report indicates that the door was broken whereas the incoming condition report indicates no damage.

Regarding item 6, the landlords have claimed \$22.38 for the cost of two USB drives which was dismissed during the hearing as there is no remedy under the *Act* for those types of costs. As a result, item 6 is dismissed without leave to reapply.

Regarding items 7 and 8, as described above, these items relate to the tenants' security deposit and pet damage deposit which will be dealt with later in this decision.

Regarding item 10, the landlords have claimed loss of income from the landlord's mother at \$700.00 per month for a period of six months due to the condition of the rental unit. The landlords testified, however; that the rental unit repairs were completed on May 24, 2017 and supplied no evidence of attempts to re-rent the rental unit as the rental unit is being sold. The landlords did admit that they thought they could not re-rent the rental unit for a period of six months which the landlords were advised was not correct as the tenancy ended by mutual agreement of the parties and not based on a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 - The landlords have claimed \$5,471.12 for the cost to replace carpets that the landlords claim the tenants damaged during the tenancy. After reviewing the photos and condition inspection report carefully, I find the tenants did damage the carpets beyond reasonable wear and tear however I will factor in depreciated value for the cost of the carpets but not the labour. I am not applying depreciated value to the labour as I don't find the tenants testimony to be reasonable and I find that if it were not for the damage caused by the tenants that the landlords could have cleaned the carpets instead of replacing them. For example, I find the tenants claim that the pink stain is a washable pen that could have been washed out. I prefer the testimony of the landlords that the stain was pink nail polish as I find the photos are consistent with pink nail polish staining. Furthermore, I find it unreasonable that if the tenants felt the stain could be washed out, that they would have washed it out before vacating to avoid being charged for the damage. Therefore, I find the tenants breached section 37 of the *Act* which states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[My emphasis added]

As a result of the above, I have applied Residential Tenancy Branch (“RTB”) Policy Guideline 40 – Useful Life of Building Elements which indicates that carpets have a useful lifespan of 10 years which is 120 months. I find that the tenancy was four years and seven months long, from August 1, 2012 to February 28, 2017 which is a total of 55 months. I also accept the undisputed testimony of the landlords that the carpets were five years old at the start of the tenancy which is 60 months and that the combined amounts of 55 months and 60 months total 115 months out of a useful lifespan of 120 months. Given the above I find the cost of the carpets (\$2,423.46 and carpet pad (\$699.66) equal \$3,123.12 plus 5% GST total \$3,279.28 before depreciation. \$3,279.28 divided by 120 equals \$27.33 and 5 multiplied by \$27.33 equals \$136.65. Therefore, I find that the tenants are responsible for **\$136.65** for the 5 months of useful life the carpets had left due to damage which I find to exceed normal wear and tear. I also find that the tenants owe the landlords \$1,599.00 for the installation of the carpet in the stairs and basement, \$499.00 to tear out and dispose of the carpet in the basement which total \$2,098.00 plus the GST which is \$104.90 which totals **\$2,202.90**. Therefore, I find the landlords have met the burden of proof and have established a total amount of **\$2,339.52** for item one as described above.

Item 2 - The landlords have claimed \$1,500.00 for painting of the drywall damage. Further to my finding for item one above; I prefer the testimony of the landlords over that of the tenants for several reasons. Firstly, the tenants agreed to the cost of drywall supplies which was a minor amount yet don’t agree to the damages to the drywall which I find is inconsistent. Secondly, regarding the gouges on the post in the basement, I do not accept that the gouges were present from an earlier tenancy as that gouges were not listed on the condition inspection report and I find that the gouges were more likely than not deliberate based on the designs on the post and that the tenants caused that damage. Thirdly, I find the damage to the walls is not reasonable wear and tear and that the tenants are responsible for the full cost of the labour. As interior paint only has a useful lifespan of 4 years, I find the interior paint is 100% depreciated as the tenancy was over four years long and the interior paint was five years old according to the landlords. As the receipt submitted by the painter did not break down the painting labour

from the cost of paint, I grant the landlords 50% of the cost of the \$1,500.00 which is \$750.00 as the receipt indicated that the paint and sundries were supplied by the painter. Therefore, I find the tenants breached section 37 of the *Act* regarding damage to the interior walls and owe the landlords **\$750.00** for item 2.

Item 4 - The landlords have claimed \$1,296.00 comprised of \$216.00 for a period of six months as the landlords stated that they needed a special insurance policy that would cover their vacant rental unit. The landlords have claimed for six months yet in the hearing testified that the last day of repairs was May 24th, 2017 which is three months later. I dismiss this item in full due to insufficient evidence without leave to reapply as I find the landlords have failed to meet the burden of proof. In reaching this finding I have considered that the tenancy ended by mutual agreement of the parties and that the landlords failed to comply with section 7 of the *Act* by attempting to re-rent the rental unit. I have also considered that the landlords' decision to sell the home is not the fault of the tenants as the landlords' mother made the decision not to rent from them and that the landlords had the option to re-rent before the unit is sold which they chose not to do. In addition, I find the document does not include the rental unit address so is of very limited weight.

Item 5 - The landlords have claimed \$55.99 to replace a damaged interior door. In keeping with my findings regarding items 1 and 2 above, I am satisfied that the tenants damaged the interior door and do not accept the tenants' version that the door already had two holes in it at the start of the tenancy and that they only caused one hole. Therefore, I find the tenants breached section 37 of the *Act* and owe **\$55.99** for item 5 as the landlords have met the burden of proof.

Item 6 – As described above, this item was dismissed without leave to reapply as there is no remedy under the *Act* to claim for USB drives in relation to a dispute resolution hearing.

Item 10 – This item is dismissed without leave to reapply as the tenancy ended by way of a mutual agreement to end the tenancy, and the landlords failed to make attempt to re-rent the rental unit after their mother made the decision not to rent the rental unit. Therefore, I find the landlords failed to comply with section 7 of the *Act*. I find the landlords have failed to meet the burden of proof.

As described above, items 3 and 9 were resolved by way of a mutual agreement between the parties in the amount owing by the tenants to the landlords of **\$1,433.32**.

As the landlords' claim had merit, I grant the landlords the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Monetary order – Based on the above, I find the landlords have established a total monetary claim of **\$4,678.83** as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Carpet and pad replacement	\$2,339.52
2. Painting of drywall damage	\$750.00
3. Supplies for drywall repair (mutual agreement)	\$33.32
4. Vacancy permit for sitting empty due to damages (comprised of \$216.00 x 6 months)	Dismissed
5. Replace interior door	\$55.99
6. 2 USB drives	Dismissed
7. Damage (Security) deposit	See below
8. Pet Damage deposit	See below
9. One month of unpaid rent (mutual agreement)	\$1,400.00
10. Loss of income (comprised of \$700.00 x 6 months)	Dismissed
11. Recovery of the cost of the filing fee	\$100.00
TOTAL	\$4,678.83

As the landlords continue to hold the tenants \$700.00 security deposit and \$700.00 pet damage deposit, I **authorize** the landlords to retain both deposits which total **\$1,400.00** in partial satisfaction of the landlords' monetary claim pursuant to sections 38 and 67 of the *Act*. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the remaining balance owed by the tenants to the landlords in the amount of **\$3,278.83**.

Conclusion

The landlords' claim is partially successful.

I order the parties to comply with the terms of their mutual agreement for items 3 and 9 pursuant to section 63 of the *Act*.

As described above, the landlords have established a total monetary claim of \$4,678.83 and have been authorized to retain \$1,400.00 of the tenants' combined security and pet damage deposits in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act* for the remaining balance owed by the tenants to the landlords in the amount of \$3,278.83. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 2, 2018

Residential Tenancy Branch